



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 3, 1998

Ms. Tina Plummer  
Open Records Coordinator  
Texas Department of Mental Health  
and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR98-2935

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119926.

The Texas Department of Health (the "department") received a request for various categories of information concerning incidents of assault and felony offenses at Rusk State Hospital, as well as "all written policies" for handling such situations. In response to the request, you submit to this office for review a representative sample of the information at issue.<sup>1</sup> You state that "[t]he Department has provided [the requestor] with several documents responsive to the request." However, you claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with confidentiality provisions in the Health and Safety Code, sections 611.002(a) and 576.005(a), and title 25, section 403.291 of the Texas Administrative Code, and article 4495b of Vernon's Texas Civil Statutes. In addition, you also contend that the information submitted as "Exhibit 2 contains employee's personal information," which is confidential pursuant to section 552.024 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that the requestor has requested information concerning an autopsy report. Although you have not submitted an autopsy report to this office,<sup>2</sup> we note that the public disclosure of an autopsy report created by a medical examiner, should it exist, is governed by section 11 of article 49.25 of the Code of Criminal Procedure rather than Health and Safety Code section 611.002(a) or 576.005. *See Font v. Carr*, 867 S.W.2d 873, 881 (Tex. App.--Houston [1st Dist.] 1993, writ dismissed w.o.j.) (specific statute controls over general statute). Section 11 provides that an autopsy report is a public record. As section 11 contains no exception for information that identifies a decedent, we believe the statute makes public autopsy reports in their entirety. Moreover, the right to privacy lapses upon death. Attorney General Opinion JM-229 (1984). We therefore conclude that the department may not withhold from required public disclosure based on section 552.101 any information on an autopsy report created by a medical examiner.

Section 552.101 excepts from disclosure information that is made confidential by law, including information made confidential by statute. The department, however, did not seek an open records decision from this office within the statutory ten business day deadline. *See Gov't Code* § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 excepts from disclosure information that is confidential by statute. Section 576.005(a) of the Health and Safety Code provides as follows:

Records of a mental health facility that directly or indirectly identify a present, former or proposed patient are confidential unless disclosure is permitted by other state law.

By its terms, this provision is limited in its application to only the records of a mental health facility. We agree that the submitted information directly identifies a present, former or proposed patient at a mental health facility. Therefore, the representative sample of records you have submitted falls within the scope of section 576.005, and thus, is excepted from required public disclosure.

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<sup>2</sup>We note that a governmental body is not expected to produce information which does not exist, nor does it require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 555 (1990), 362 (1983).

Because our determination under section 576.005(a) is dispositive, we need not address the department's other claims of exemption from public disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping "S" at the beginning.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

Ref.: ID# 119926

cc: Ms. Vanessa Curry  
Jacksonville Daily Progress  
P.O. Box 711  
Jacksonville, Texas 75786  
(w/o enclosures)